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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 446

THE E. INGRAHAM COMPANY, *Petitioner*

vs.

BOARD OF TAX REVIEW OF THE TOWN AND CITY OF BRISTOL, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut

BRIEF OF RESPONDENT IN OPPOSITION

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ACE PRINTERY INC — HARTFORD

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OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut is reported in 146 Connecticut 403, 151 A. 2d 700, and is reprinted in Appendix to Petitioner's brief, page 4a.

JURISDICTION

The asserted grounds for jurisdiction are set forth in the petition.

QUESTION PRESENTED

Should the Supreme Court review a state court decision decided against a petitioner who, having

elected to sue for tax relief on one of several statutory procedures under state law, was denied relief because it failed to establish facts bringing its case within the prerequisites of said statutes?

STATUTES INVOLVED

The statutory provisions involved are the General Statutes of Connecticut, Revision of 1949, Sections 1745 and 1801.

STATEMENT OF FACTS

The statement of the Petitioner contained in its petition beginning at page 3 sets forth the history and facts surrounding this litigation and will, therefore, not be repeated herein.

ARGUMENT

I

The Court below has correctly construed Section 1801 under which this case was tried and no federal question is presented.

The Petitioner elected to proceed in the instant case solely under Section 1801, Connecticut General Statutes, Revision of 1949, which provides a remedy "when property is wrongfully assessed" and is directed against the collection of an illegal tax. As the Court below points out, the Petitioner failed to establish one of two essential prerequisites and thereby lost its case.

Section 1801 is not a substitute for an appeal from the Board of Tax Review, but only provides a different method of attacking the validity of an assessment upon two specific grounds. The first involves a tax

laid on property not taxable in the municipality where it is situated. The second, under which the Petitioner is solely proceeding, relates to a tax computed on an assessment which under all the circumstances was (a) "manifestly excessive" and (b) "could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property." Petitioner's property was admittedly assessed at less than full value and, therefore, the assessment made could not be manifestly excessive. *Section 1745, General Statutes of Connecticut, Revision of 1949.*

This Court has repeatedly stated that it is for the state courts to determine the adjective as well as the substantive law of the state. The Supreme Court of Errors of Connecticut did not, therefore, deny due process when it ruled that the Petitioner had failed to establish a *prima facie* case for relief under Section 1801. The Petitioner claims also that it has exhausted all administrative and legal remedies under state law. This is not so. The Petitioner creates this illusion by citing into this case the constitutional questions and arguments it raised in an earlier case, *The E. Ingraham Company vs. Town and City of Bristol*, 144 Conn. 374 (1957), which it did not attempt to bring before this Court. Those issues cannot be reviewed at this time in this new and substantially different litigation. It may be that Petitioner should have asked for a writ of certiorari in its earlier case but the fact is that it did not do so. It might be added that the earlier case was brought under Section 1800, Connecticut General Statutes, Revision of 1949, which provides a remedy when a taxpayer is aggrieved by the assessment placed upon his taxable property and seeks modification

thereof. In such action, the broad constitutional questions could have been reserved for argument in this Court. Respondent submits that the determination of those broad constitutional questions was not an issue in this case and it appears that the Petitioner selected a remedial tool not designed to perform the work it desired to have done.

It is the Respondent's position that not every grievance of a taxpayer can or must be adjusted under the procedure established in Section 1801. As a result, no federal question is created simply because a petitioner elected to proceed under Section 1801 and lost when it failed to meet its requirements. Due process for the redress of grievances was provided but not used. It is not possible to raise at this time, and in this case, constitutional arguments which would have been proper in a different proceeding in which they could have been presented, briefed, argued and, if need be, presented for consideration before this Court.

II

In this appeal no federal question exists concerning Public Act No. 673 of the General Assembly of the State of Connecticut, 1947.

This Court has ruled, on numerous occasions, that it will not review the constitutionality of a state statute unless that issue was expressly brought before, *and passed upon*, by the state court. Public Act No. 673 was not invoked to uphold the decision in this case and was not and is not necessary to a determination of the issues raised in this case.

CONCLUSION

Borrowing the language of Rule 19 of the Revised Rules of the Supreme Court of the United States, there are in this case "no special or important reasons" to review the decision below on writ of certiorari. A case rises or falls on the strength or weakness of the issues pleaded and presented in it and in it alone. It is respectfully submitted that all other issues are collateral only and outside the scope of a correct determination.

For the foregoing reasons, Respondent submits that the case is not one wherein certiorari should be granted.

Respectfully submitted,

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